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April 19, 1994

VIA MESSENGER

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

RE: **Ex Parte Presentation**
Bell Atlantic Objection to Processing Broadband PCS Applications
Gen. Docket 90-314, ET Docket 93-266

Dear Mr. Caton:

Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits this letter with respect to a letter filed March 16, 1994 by Bell Atlantic Personal Communications, Inc. commenting upon the Commission's February 25, 1994 Public Notice inviting broadband PCS pioneer's preference winners to file PCS license applications ("February 25 Notice"), and the Oppositions of Cox Enterprises, Inc. and American Personal Communications filed on March 31, 1994. Cablevision generally agrees with Bell Atlantic that it is premature for the Commission to invite the filing of applications while critical rules affecting the processing of such applications are undergoing a thorough reconsideration. Aside from the issues raised by Bell Atlantic, Cablevision also believes that the February 25 Notice is fatally defective because it fails to make clear that the pioneer's preference winners must be required to provide a detailed showing that the systems proposed in their applications "substantially use the design and technologies" upon which their Pioneer Preferences are based, as required in the Commission's Third Report and Order. Amendment of the Commission's Rules to Establish New Personal Communication Services, Third Report and Order, FCC No. 93-550 ¶ 8 (released February 3, 1994).

As a general matter, Cablevision agrees that the Commission should not initiate processing of applications filed by the Pioneer's Preference selectees until its underlying PCS rules have been finalized. By all reports, a thorough reconsideration of virtually every aspect of the PCS rules is currently underway, in response to the filing of nearly 70 petitions for reconsideration. This reconsideration process presents the clear possibility that standards for processing applications may change, as the February 25 Notice acknowledges. It simply makes no sense to accept such applications and begin the pleading cycle specified in the Notice if the ground rules may change in mid-stream. If, for example, petitions to deny are required to be filed prior to release of the Commission's order on reconsideration, the petitioners will be lacking critical parameters for their filings. Moreover, the Commission will lose the benefit of petitioner's arguments with respect to the applicant's compliance with any subsequently adopted rules.

The February 25 Notice is also defective because it fails to explicitly require that the parties submit detailed showings with respect to their satisfaction of the condition imposed upon pioneer's preference licenses that the licensee utilize the technology for which the preference selectee earned a preference. The Third Report and Order could not be more clear:

> We are directing the relevant licensing bureau to condition each 2 Ghz PCS license obtained through the pioneer's preference process upon the licensee building a system that substantially uses the design and technologies upon which its preference award is based. This condition is consistent with our award of a dispositive pioneer's preference. In the pioneer's preference Report and Order we observed that the risk an innovator takes is that it may not be able to translate its development work into full business operation. We also observed that an otherwise qualified innovator would risk that the Commission may not authorize its proposed service. It is inherent in our Pioneer's Preference policy that the innovator use the technology upon which its preference is based.

Third Report and Order at ¶ 8 (footnotes omitted) (emphasis added). The Commission went on to observe that it would consider a waiver "only in a case in which there is an overriding national objective that may be thwarted..." Id., n. 11.

The February 25 Notice does not call for any information demonstrating compliance with this condition. Moreover, FCC Form 401, which the applicants are required to submit, since it is not tailored for PCS, does not call for any such information.

The Commission should not rely simply on voluntary submissions by the parties. The showings contained in the two applications filed to date, those of American Personal Communications and Cox Enterprises, Inc., are uneven at best. While APC discusses the use of its "Pathguard" frequency management system, the application also makes clear that APC has not selected crucial basic technologies to be used in its PCS system. See American Personal Communications, Application for an Initial Authorization in the Personal Communications Service, Exhibit 4 at 4, n.6 (filed January 18, 1994). Cox' application provides even less information. Cox acknowledges the condition to be imposed upon its license, and states generally that it will abide by this condition. Cox Enterprises, Inc., Application for an Initial Authorization in the Personal Communications Service for the Los Angeles-San Diego MTA, Exhibit 5 at 2-3, n.3. Beyond this, its application merely contains a series of general assertions that it will use its purported innovations in its PCS system, without supporting detail. Moreover, again, the Cox application makes clear that Cox has not selected crucial technologies to be used in its system, id. at 16, so the basis for these general assertions is unclear at best.

Cablevision submits that a far more detailed showing of compliance with the condition is critical to proper processing of the applications. As the Third Report and Order itself indicated, satisfaction of this condition is essential to "insure the integrity of our Pioneer's Preference policies..." Third Report and Order at ¶ 8. Moreover, evaluation of compliance with this condition will in all likelihood raise a variety of complex technical issues.

If, as the February 25 Notice appears to contemplate, a detailed showing with respect to compliance with this condition is not supplied along with each application, or in an amendment to each application prior to its acceptance for filing, parties petitioning to deny will be left to speculate on these important issues. Moreover, such parties will have lost the benefit of the thirty day petition to deny for analysis of the showing. The only detailed explanation with respect to any compliance issues raised in petitions to deny will come in the applicant's

"opposition" to any such petitions to deny, after which no further pleadings are authorized. Such a process is hardly conducive to reasoned decisionmaking on this critical issue.

For the reasons set forth herein, Cablevision requests that the Commission defer the filing and acceptance of pioneer's preference applications until after the Commission has released the text of its Order on reconsideration of the PCS rules. Whether or not the Commission defers processing, however, the Commission should make clear, through a separate Public Notice, that the applicants for licenses pursuant to pioneer's preferences must submit a detailed and complete showing that their proposed system "substantially uses the design and technologies" upon which their preferences were based.

Please address any inquiries to the undersigned.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION

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Gen. Docket 90-314, ET Docket 93-266 Service List

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